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Addendum

Thematic discussion on criminal justice responses to prevent and counter cybercrime in all its forms, including through the strengthening of cooperation at the national and international levels

1. At its 4th and 5th meetings, on 15 May 2018, and its 6th meeting, on 16 May 2018, the Commission considered agenda item 5, entitled "Thematic discussion on criminal justice responses to prevent and counter cybercrime in all its forms, including through the strengthening of cooperation at the national and international levels". The discussion focused on the following sub-themes:

(a) Current challenges;

(b) Possible responses to them.

2. For its consideration of agenda item 5, the Commission had before it the note by the Secretariat containing the guide for the thematic discussion (E/CN.15/2018/6).

3. The prominent theme for the twenty-seventh session of the Commission ("Criminal justice responses to prevent and counter cybercrime in all its forms, including through the strengthening of cooperation at the national and international levels") had been decided by the Economic and Social Council in its decision 2016/241.

4. The discussion on sub-theme (a) was presided over by the Chair and led by the following panellists: Digaan Joseph Mangena (South Africa), Jayantha Fernando (Sri Lanka), Eric do Val Lacerda Sogocio (Brazil), Markko Künnapu (Estonia) and Knut Jostein Sætnan (Norway). The discussion on sub-theme (b) was presided over by the Chair and led by the following panellists: Feng Xu (China), Carlos Medina Ramírez (Colombia), Artur Zavalunov (Russian Federation) and Pedro Verdelho (Portugal).

5. The Chair made an introductory statement. Introductory statements were also made by the Director of the Division for Treaty Affairs and the Chief of the Cybercrime and Anti-Money-Laundering Section of UNODC.

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6. The representative of Bulgaria made a statement (on behalf of the European Union and Albania, Andorra, Bosnia and Herzegovina, Georgia, Iceland, Liechtenstein, Montenegro, the Republic of Moldova, San Marino, Serbia, the former Yugoslav Republic of Macedonia, Turkey and Ukraine). The observer for the State of Palestine made a statement on behalf of the Group of Arab States. Statements were also made by the representatives of Saudi Arabia, Germany, India, the United States of America, Pakistan, Mexico, Iran (Islamic Republic of), the Russian Federation, Cuba, Serbia, Indonesia, China, Japan, France and South Africa.

7. Observers for Canada, Iraq, Spain, Viet Nam, Belgium, Liechtenstein, the Syrian Arab Republic, the Philippines, Algeria, Thailand, Kuwait, Nigeria, Turkey, Oman, Azerbaijan, Australia and the Netherlands also made statements.

8. At the 5th meeting of the Commission, the Chair of the Commission on the Status of Women, Geraldine Byrne Nason, made a statement via videoconference.

9. The observer for the League of Arab States made a statement.

10. The observer for the Parliamentary Assembly of the Mediterranean also made a statement.

A. Summary by the Chair

11. The Chair's summary of the salient points, which was not subject to negotiation, is presented below.

Current challenges

12. Many speakers stressed that cybercrime continued to increase, posing challenges for legislators and policymakers. Threats posed by cybercrime in its different forms were multifaceted and multidimensional and affected not only citizens, but also businesses and Governments.

13. Many speakers expressed their concern about the creation of a sophisticated digital underground economy in which computer data were the commodity, as well as about the facilitating role of cybercrime in the commission of various forms of transnational organized crime and terrorism.

14. A number of speakers noted that cloud computing raised a number of challenges for criminal justice practitioners, in particular with regard to the applicable law and the criminal jurisdiction. Requesting computer data from other jurisdictions was challenging owing to the unknown location of those data and delays in the response that often exceeded the data-retention period, which could lead to the destruction of key electronic evidence. Dual criminality was also highlighted as a challenge for international cooperation.

Possible responses to them

15. In response to the challenges posed by cybercrime, many speakers provided an update on their preventive measures and legislative reform efforts, including with regard to criminalization and electronic evidence.

16. Many speakers underlined that international cooperation was crucial to effectively combating cybercrime, given its transnational and rapidly evolving nature.

17. Many speakers highlighted the need for fast and effective responses to requests for mutual legal assistance related to electronic evidence. A speaker suggested legislative amendments to allow for lawful access to data where only a set of possible locations of those data was known (i.e., in an indeterminate location), giving due respect to the sovereignty and territoriality of States.

18. Many speakers called for urgent action through, inter alia, the exchange of information and best practices, the development and updating of substantive and procedural laws, the more effective and efficient use of public-private partnerships,

including for the prevention of cybercrime, electronic evidence-gathering and take-down procedures, the strengthening of international cooperation mechanisms, including 24/7 networks, and capacity-building activities. In that regard, several speakers expressed appreciation for the work of UNODC in providing focused technical assistance to requesting countries through its Global Programme on Cybercrime.

19. Many speakers underlined the significance of efforts to enhance the capabilities of competent national authorities to deal with cybercrime and electronic evidence. They called upon States and technical assistance providers to step up efforts for capacity-building and awareness-raising among practitioners. A number of speakers reported on capacity-building measures taken in their jurisdictions for law enforcement authorities and the judiciary. Specifically, some speakers recommended that the enactment of new legislation be accompanied by appropriate training measures.

20. A number of speakers referred to the value of existing regional and international instruments, including the Organized Crime Convention and the Council of Europe Convention on Cybercrime (Budapest Convention), and the need to enhance implementation of those instruments. Several speakers referred to the preparation of a second protocol to that Convention that would cover electronic evidence "in the cloud".

21. A number of speakers reiterated that new responses were needed, including a new universal or global legal instrument within the framework of the United Nations. Reference was made by a speaker to the draft United Nations convention on cooperation in combating cybercrime presented by his Government in 2017.

22. Many speakers highlighted the added value of the open-ended intergovernmental Expert Group to Conduct a Comprehensive Study on Cybercrime to conduct a comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector as the only platform within the United Nations for the exchange of information with a view to examining options to strengthen existing and to propose new national and international legal or other responses to cybercrime.

B. Workshop on criminal justice responses to prevent and counter cybercrime in all its forms, including through the strengthening of cooperation at the national and international levels

23. The 1st meeting of the Committee of the Whole, on 14 May 2018, was devoted to a workshop on the theme "Criminal justice responses to prevent and counter cybercrime in all its forms, including through the strengthening of cooperation at the national and international levels", organized by the institutes of the United Nations crime prevention and criminal justice programme network. The workshop was chaired by the First Vice-Chair of the Commission and was moderated by a representative of the Australian Institute of Criminology, which is a member of the United Nations crime prevention and criminal justice programme network.

24. An opening statement was made by the Director of the Division for Treaty Affairs of UNODC. Presentations were made by panellists from Cardiff University, United Kingdom, the University of Leeds, United Kingdom, the University of Melbourne, Australia, the Monash University, Australia, Beijing Normal University, the Australian Institute of Criminology, the United Nations Interregional Crime and Justice Research Institute (UNICRI), the Korean Institute of Criminology, the International Centre for the Prevention of Crime, and UNODC. During the discussion, a statement was made by the representative of the Russian Federation. Closing statements were made by the First Vice-Chair of the Commission and by the representative of the Australian Institute of Criminology.